

LABOUR DEPARTMENT

The 30th November, 1982

No. 9(1)82-6Lab/10970.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Rubby Knitting Industries, 14/5 Mathure Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, FARIDABAD, HARYANA

Reference No. 217 of 1981

between

SHRI INDER KANT JHA, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S RUBBY KNITTING INDUSTRIES, 14/5. MATHURA ROAD, FARIDABAD

Shri Mohit Kumar Bhandari, for the workman.

Shri G.S. Chaudhary, for the respondent management

AWARD

This reference No. 217 of 1981 has been referred to this court by the Hon'ble Governor of Haryana, *vide* his order No. ID/FD/109/81/35865, dated 30th July, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Inder Kant Jha, workman and the respondent management of M/s. Rubby Knitting Industries, 14/5, Mathura Road, Faridabad. The term of the reference was—

Whether the termination of services of Shri Inder Kant Jha was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that he joined the services of the respondent from 16th June, 1980, as helper at a salary of Rs. 240 per month and he was terminated on 23rd March, 1981, without any reason. He sent a complaint to the Labour Inspector through registered post, but the respondent did not appear in spite of this notice of the respondent. He was terminated illegally & is entitled for reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the demand notice of the workman is wrong, false and frivolous and liable to be dismissed. There is no dispute between the parties as the establishment comes under the Shops & Commercial Establishment Act. So the Industrial Dispute Act is not applicable. The workman was appointed on a temporary vacancy and was removed when job was finished. He was a temporary workman and removed according to certified standing orders as simplexitor discharged. So the reference be rejected.

On the pleadings of the parties, following issues were framed : —

1. Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
2. Relief ?

My finding on the issues is as under : —

Issue No. 1. The representative of the respondent argued on this issue that as stated by Shri S.K. Talwar, Time keeper of the respondent factory, the workman was employed as temporary workman and removed when the work was finished. He has stated that he has brought the attendance register from January, 1981 and Provident Fund Statements, the copy of which is Ex-M.1, M-2. The workman gave no demand notice to the factory and the workman was engaged on trial basis. So there is no dispute of the Industrial Disputes Act and the workman is not entitled to any relief.

The representative of the workman argued on this issue that it is admitted fact that he was an employee of the respondent. The respondent witness has stated in his cross-examination that no appointment letter was given to the workman. When no appointment letter was given to the workman how the respondent can say that the workman was appointed on temporary basis. The workman was appointed as helper on a regular job on 16-4-80 and worked satisfactorily upto 18-3-81. The respondent stopped the workman on

the gate on 18.3.81. The workman sent a complaint to the Labour Inspector on 23.3.81 through registered A.D. which is Ex.W-1 and the postal receipt is Ex.W-2. The workman visited the office of Labour Inspector on the date given by him but the respondent did not turn up in spite of the notice. The Labour Inspector advised him to give the demand notice and the workman gave the demand notice and his case was referred to this court. He further argued that on one hand the respondent states in his written statement that respondent concerned is covered under the Shops and Commercial Establishment Act on the other hand they state in para No. 3 that the workman was temporary and his services were finished according to the Certified Standing Orders. When there are Certified Standing Orders with the respondent then it is not covered under Shops and Commercial Estt. Act and is covered under the Factories Act. The workman was stopped without any reason and now the respondent treats the illiterate person and exploit the workers for not paying them the full wages and terminated the services without any reason. It is also a case of that type. The respondent has not taken any plea for removing the service of the workman except that he was a temporary workman and was removed after finishing the job. The respondent has produced no document or evidence to prove this fact that the workman was employed temporarily and the work was finished. The workman has stated in his statement that he was working in Dyeing Department which is still functioning which shows that the respondent has illegally terminated the services without any reason. So he is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file, I am of the view that the respondent has failed to prove that the services of the workman were terminated rightly for a just reason. The termination is unjustified because there is no reason given for his termination. It is not proved on file that he was employed as temporary or casual workman. So the workman was not a temporary and his termination was illegal and without any justification, and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 14th October, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 2222, dated 19th October, 1982.

Forwarded four copies to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

No. 9(1)82-6Lab/10971.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. National Industrial Corp., G.T. Road, Panipat.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 187 of 1981
188 of 1981 and 191 of 1981

between

SARVSHRI RAM CHET, RAMA SHANKAR AND MURARI LAL, WORKMEN AND THE MANAGEMENT OF M/S. NATIONAL INDUSTRIAL CORPORATION, G. T. ROAD, PANIPAT.

Shri Raghbir Singh, for the workmen.

Shri Surinder Kaushal, for the respondent management.

AWARD

These references No. 187/188 and 191 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana, —*vide* his order No. ID/KNL/55-81/31442, dated 30.6.81, ID/KNL/54-81/31436, dated 30.6.81 ID/KNL/61/81/32129, dated 3.7.81, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sarvshri Ram Chet, Rama Shankar and Murari Lal, workmen and the respondent management of M/s National Industrial Corporation, G.T. Road, Panipat. The term of the reference was,—

Whether the termination of services of Sarvshri Ram Chet, Rama Shankar and Murari Lal was justified and in order? If not, to what relief are they entitled?

Notices were issued to the parties on receiving these references. The parties appeared and filed their pleadings. The case of the workman according to their demand notice and claim statement is that they

were the employees of the respondent and drawing Rs. 330 per month. The respondent did not write the name of the claimants in their muster roll and the respondent terminated the services of some workers. The claimants supported the case of the workers and the management terminated the services of the claimant on 23-3-81. The Union wrote a letter on 23-3-81 copy to the Labour Inspector and the claimants also sat on Dharna and dharna continued up to 23-3-81. The settlement under section 12(3) of the Industrial Disputes Act, 1947, was arrived between the parties and the claimants were free to raise the dispute for termination. The respondent terminated the services of the claimants without any notice or charge-sheet. The action of the management is illegal and unjustified and they are entitled for reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the claimants were never employed by the respondent management and he never worked with the respondent. There was a dharna outside the factory in the month of March and some outsiders also supported the workers. The matter was duly conciliated upon and after negotiations, a settlement under section 12(3) was arrived at. On the demand notice the persons who were the employees were taken in employment and their names were specifically mentioned in the settlement itself. Since the claimants were not the employees of the respondent so there is no name of these claimants in this settlement and there was no question of take them on duty. These workmen gave the demand notice on the instigation of the union to harass the respondent. In the demand notice and claim statement of these workmen there is no mention of the name of terminated workers so it is fake. The claimants simply sit on dharna outside the factory to gear up the union activities and they were not the employees of the respondent. The Conciliation Officer called the parties and during the conciliation proceedings there was settlement on 23-3-81 and it was agreed that the workers whose name find in the settlement shall be taken on duty. Since the present claimants were not in the employment they were not taken on duty. The claimants have not mentioned in their demand notice when their services were terminated. It clearly shows that the claimants were not aware of the cause of action, because they were not employees of the respondent. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed,—

1. Whether the termination of these workmen was proper, justified and in order ? If not, to what relief are they entitled ?

At the time of framing the issue both the parties prayed to consolidate the three references numbering 187, 188 and 191 of 1981 which are between the same parties and on the same subject-matter. I consolidated their request and consolidated these references and ordered that the evidence shall be taken in the reference No. 187 of 1981.

My findings on the issues is as under:—

Issue No. 1. The representative of the respondent argued on this issue that as stated by Shri Vishwa Nath, partner of the respondent factory as MW-1, that he brought the attendance register of the factory in which there is no name of Shri Ram Chet and Murari Lal exist and these were not employees of the respondent. They have not worked at any time with the respondent so there is no question of their termination. There was a dispute in the factory and in the dispute they stopped the gate of some workers on which there was a dharna before the factory gate, in the month of March, 1980 and some outsider also participated in dharna and geared up the union activities. They also raised the demand notice against the respondent and on those demand notices the Labour Officer-cum-Conciliation Officer called the parties, and in the conciliation proceedings there was a settlement under section 12(3) of the Industrial Disputes Act which is Ex.M-1 in which the name of workers is given who were the employee of the union and according to this settlement these were taken on duty and as those claimants were not the employees of the respondent and not given in the settlement so they were not taken on duty. They raised the demand notice on instigation of the union who wants to harass and to make loss to the respondent. He further argued that the workman has produced no documentary evidence to prove this fact that they were employees of the respondent. Simply only Shri Ram Chet came in evidence as WW-1 and other two persons did not come forward even for evidence and Shri Ram Chet has simply stated that they were employees of the respondent and getting the salary of Rs. 330 per month. He has not stated in his evidence that when he joined the services of the respondent. The claimants were the rickshaw-puller who sat in dharna with the other workers and they raised these demand notices. The claimants have brought another witness Shri Ram Lochan, General Secretary of the union as WW-2, who has not stated anywhere in the statement that these claimants were employees of the respondent when the claimant's witness has not supported the claimants's claim then how they prove that they were employees of the respondents. So without any proof that they were employees of the respondent from the side of the claimants it is proved that the demand notice and the reference is wrong.

The representative of the workman argued that as stated by Shri Ram Chet he was the employee of the respondent and drawing Rs. 330 per month. Their names were not written in the attendance register and they raised the demand notice for their names to be mentioned in the attendance register. On this demand notice the respondent turned out the workers on 3-3-1981. They sat on dharna before the factory gate and gave the demand notice. He further argued that General Secretary of the union has come as

WW-2 who has stated in his statement that on the complaint of all these workmen he made a complaint to the Labour Inspector on 27-1-81 of about twenty workers, the copy of which is Ex.W-1. On this complaint the Labour Inspector inspected the factory and got written six names of the workers in the attendance register. After this complaint the respondent removed six workmen on 2-3-81 on that termination he gave the notice of dharna on 2-3-81 which is Ex.W-3. Then the respondent removed some other workers and notice was sent to the management which is Ex. W-4 and all the workmen sat on dharna. This shows that there was a illegal termination of these workmen and they were terminated only because of their general demand notice that their names were not written in the attendance register and they were working for the last one year.

After hearing the arguments of both the parties and going through the file, I am of the view that the claimants have failed to prove the fact that they were employee of the respondent. Even the General Secretary of the union has not stated in his statement that these three claimants were the employers of the respondent. He has simply stated about the notice of dharna and complained about the workmen. The case of the respondent is very clear on the basis of the settlement under section 12(3) of the Industrial Disputes Act before the Conciliation Officer. If these claimants were the employees of the respondent then certainly their name should be there in the settlement. When their names are not mentioned in the settlement it shows that they are not employees of the respondent and they were not included in the settlement. When there was one case of so many workers of termination and there was a settlement of these workers before the Conciliation Officer and in which the name of ten workmen are shown and not the names of these workmen which shows that these workmen were not employees of the respondent and their demand notice are wrong and the references are also wrong and when the workmen have failed to prove this fact which was alleged by the respondent in the written statement that they are not employee of the respondent they should have proved this fact by calling the other workers from the factory to establish this fact that these claimants were also used to work in the factory and out of three claimants only one claimant came forward for evidence which also weaken the case of the claimants and when it is proved that these claimants were not the employees of the respondent so there is no question of termination. In these circumstances the claimants are not entitled to any relief.

This be read in answer to these references.

Dated the 15th October, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

Endt. No. 2223, dated the 19th October, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana, Faridabad.

No. 9(1) 82-6 Lab/10972.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. Arresto Crafts International Pvt. Ltd., Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER LABOUR COURT, HARYANA, FARIDABAD

Reference No. 110 of 1981

between

SHRI LALA RAM, WORKMAN, AND THE RESPONDENT MANAGEMENT OF M/S ARRESTO CRAFTS INTERNATIONAL PRIVATE LTD., MATHURA ROAD, FARIDABAD

versus S. W. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 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On receipt of order of reference, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he joined the respondent factory on 1st November, 1979 as Tailor at Rs. 500 per month and the respondent terminated the services of the workman on 22nd September, 1980 without any letter or reason. On 23rd August, 1980, he was allowed one month leave upto 23rd September, 1980 and when he returned back the respondent refused to give him job. The workman was active member of the union and he was victimised. So he is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the claimant absented himself from the duty and gainfully employed. His services were never terminated but he lost his lien by remaining absent. The workman was not given the fixed salary and was appointed on piece rate. The claimant remained absent from 20th August, 1980 from his duty and lost his lien from the employment despite repeated calls made by the respondent through letters dated 1st September, 1980 and his name was struck off from the roll of the company on 26th September, 1980. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the claimant is gainfully employed ? If so, to what effect ?
- (2) As per reference ?
- (3) Whether the claimant remained absent from duty and has abandoned his job ? If so, to what effect ?

My findings on the issues is as under :—

Issue No. 1 and 3 :

Issue No. 1 and 3 are inter-connected issues and the parties argued these issues all together. The respondent representative argued on this issue that the workman joined the service of the respondent on 1st November, 1979 on a piece rate basis and worked upto 19th August, 1980 and from 20th August, 1980 he absented himself from duty and got the service in M/s. Indexpo International Pvt. Ltd. from 20th August, 1980. The certificate given by the concerned factory is Exhibit M-5 clearly certify that "Shri Lala Ram, son of Shri Jodhey Ram worked in our concerned from August 20th to September 30th, 1980 as a 'Tailor' ?" as stated by Shri Rajbir Singh a adviser of M/s. Indexpo International Pvt. Ltd., as MW-2 that the workman who is present in the court worked in their factory and gave the application form Exhibit M-4. He worked with them from 20th August, 1980 to 30th September, 1980. Exhibit M-5 is the certificate issued from M/s. Indexpo International Pvt. Ltd. The workman has given his previous record at mark "A" on Exhibit M-4 which is of the respondent factory. The witness has further stated that he brought the attendance register of the factory concerned to the workman is shown at Serial No. 110. He further argued that Shri Rajinder Kumar, Factory Manager of the respondent factory has come as MW-1 and stated that he knows the claimant who worked as Tailor in the factory. He used to work on piece rate basis. His services were not terminated. He himself absented from the job and did not come to the factory. The respondent sent a letter on 1st September, 1980 to call him to work which is Exhibit M-1 through UPC Exhibit M-2 with other five workers but this workman did not return inspite of this letter and his name was struck off from the roll of the company and sent a letter Exhibit M-3 for information. So the workman left the service of his own by taking the job in another factory and gainfully employed. So his services were not terminated.

The representative of the workman argued on this issue that the workman joined the services of the respondent on 1st November, 1979 at monthly salary of Rs. 500 per month as stated by the workman as WW-1 in his statement and he was terminated on 23rd September, 1980 without any reason and notice to the workman. The workman took leave from the respondent from 23rd August, 1980 to 23rd September, 1980 but when he came back after enjoining the leave he was not taken on duty. The certificate produced by the respondent is not genuine. He further stated that Exhibit M-1 the certificate from M/s. Indexpo International Pvt. Ltd., does not concern to him and the application form Exhibit W-4 does not bear his signature at mark 'B'. It is a fabricated story by the respondent to justify the termination of the workman. The respondent gave the demand notice Exhibit W-1 and there was conciliation proceedings before the Conciliation Officer which is Exhibit W-2. The respondent has wrongly terminated the services of the workman and he is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file, I am of the view that the workman has failed to prove his case because the respondent has produced the witness from M/s. Indexpo International Pvt. Ltd., who gave the certificate Exhibit M-1 and Exhibit M-4 the application form of the firm in which the name of his father and experience is given and the workman has signed. The signatures of the workman though he has denied on the application form but ressembles from the signatures on demand notice and claim statement. What was the need of a Delhi firm to come in the Court and state that he was employed from 20th August, 1980 to 30th September, 1980. The witness has also brought the attendance register where it is shown

that the workman has worked from 16th August, 1980 to 31st August, 1980 and received Rs. 156.35P. after deducting Rs. 5 as ESI. The workman's name is again given at Serial No. 75 from 1st September, 1980 to 16th September, 1980 and received Rs. 237.25 P. The witness has also stated in his cross examination that the workman came for trial four days before this application. This shows that the workman was gainfully employed and was absented from duty without any information to the respondent. The respondent sent the letter dated 1st September, 1980 to call the workman for duty which is Exhibit M-4. The workman has admitted this fact that the letters received by him and after receiving these letters the workman did not come to the factory to join his duties. This shows that he was gainfully employed and did not want to come on duty of the respondent and left the job of his own. So the issue is decided in favour of the respondent and against the workman.

Issue No. 2

After deciding the issue No. 1 and 3 in favour of the respondent. There is nothing to discuss for issue No. 2 because the workman left the service of his own and his services were terminated by the respondent as discussed above in issue No. 1 and 3. So the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 14th October, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 2224, dated 19th October, 1982

Forwarded (four copies) to the Commissioner and Secretary to the Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 82-6Lab/10973.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s, Escorts Ltd., Plant No. I, 18/4, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 262 of 1980

between

SHRI KESAR CHAND, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. ESCORTS LTD., PLANT NO. 1, 18/4, MATHURA ROAD, FARIDABAD

Shri H.R. Dua for the workman.
Sri S.S. Sethi for the respondent.

AWARD

This reference No. 262 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana, vide his order No. ID/FD/84-80/30669, dated 20th June, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Sri Kesar Chand, workman and the respondent management of M/s. Escorts Ltd., Plant No. 1, 18/4, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Kesar Chand was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference order, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he was appointed as Trainee on 30th October, 1975 and was made regular on 1st May, 1976. The workman an active member of the union which the management did not relish the trade union activities and the management was in search of an opportunity to victimise the claimant. The claimant had duly informed the management of the sanctioning of the leave through leave application dated 31st March, 1980. The respondent wrongly stopped the claimant on 1st April, 1980. He was not issued any charge-sheet nor retrenchment compensation was paid at the time of termination. So he is entitled for his reinstatement with full back wages and continuity of service. The plea of the management of abandonment is neither legal nor correct and afterthought and without any force and foundation.

The case of the respondent according to the written statement is that the dispute is not an industrial dispute within the meaning of section 2-A of the Industrial Disputes Act as the workman was deemed to have left his employment in accordance with the provisions of Certified Standing orders applicable to the Industrial Establishment, which is not discharge, dismissal, retrenchment or termination with the meaning of section, so the reference is incompetent. The workman joined the service from 30th October, 1975 as trainee and appointed as an inspector. The claimant was not a member of any union and not victimised due to this fact. He was sanctioned leave from 11th March, 1980 to 17th March, 1980. On the expiry of the said period he did not report for duty nor did he apply for any extension of leave. He thus over stayed his sanctioned leave. Clause 37 of the Certified Standing Orders applicable to their establishment was enough to struck off the name of the workman from the roll. Since the period exceed 10 days, he has deemed to have left the company from 1st April, 1980. The claimant did not came to the factory on 1st April, 1980. As the claimant was never terminated by the management there was no need of any enquiry as there was no charges of misconduct against the workman. The claimant lost his appointment according to the Certified Standing orders. The provisions of section 25-F are not attracted to the facts of this case. As the claimant was never terminated. So the reference is bad in law and may be dismissed.

On the pleadings of the parties, the following issues are framed :—

- (1) Whether the claimant workman absented himself from duty for more than stipulated period ?
So it is a case of voluntary abandonment of service. If so, to what effect ?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If not to what relief is he entitled ?

My findings on the issues is as under :—

Issue No. 1 :—The representative of the respondent argued on this issue that Shri Ashok Nagpal stated as M.W.-2 that he has brought the attendance register from February to April, 1980. First to 3rd March, 1980 were closed days and from 4th March, 1980 the claimant was absenting from duty. On 15th March, 1980 he received a medical certificate issued by the E.S.I. The Certificate is Ex. M-1, dated 11th March, 1980. Since the E.S.I. certificate are issued for one week Shri Kesar Chand was treated on leave from 11th March, 1980 to 17th March, 1980. Thereafter no leave application was received from the claimant and he was marked absent in the attendance register, up till 1st April, 1980. In accordance with the Certified Standing orders a person who is absent for 10 days is treated to have abandoned his service. He written the memo after checking up from Mr. S.K. Sehgal where Shri Kesar Chand was working who confirmed that no leave application or intimation was received. The letter memo is Ex. M-8 which was put up to the Personnel Manager for necessary action. Shri N.S. Ratra, M.W.-2 Corroborated the statement of Shri Ashok Nagpal and further stated that the name of the claimant was removed from 1st April, 1980 as per Certified Standing Orders. The copy of which is Ex. M-5. The relevant clause 37 impress the management to remove the name of the workman. He further argued that Shri S.K. Sehgal, Department Incharge also appeared as M.W.-1 who has stated that he received only one medical certificate which is Ex. M-1 which was forwarded to the Time Office. No other medical certificate or application is received from the claimant. He further argued that the evidence produced on behalf of the management shows that the claimant Shri Kesar Chand did not report for duty in March, 1980 and received only one medical certificate Ex. M-1 from 11th March, 1980 to 17th March, 1980 and he was shown in the same way in the attendance register. So he left the service of his own without any information and intimation to the management and the management has rightly struck off the name according to clause 37 of the Certified Standing Order and the workman abandoned the service of his own.

The representative of the workman argued on this issue that as stated by the workman as W.W.-2 he joined the service of the respondent on 30th October, 1975 and was made confirm on 1st May, 1975. He fell ill on 6th March, 1980 and sent a medical certificate from the E.S.I. for sanction of leave and from 6th March, 1980 to 11th March, 1980. He was seriously ill and the E.S.I. could not treat well and he sent medical certificate and application for leave upto 31st March, 1980, through Shri Dalip Rana who has come in the witness box as W.W.-1 who was employee of the respondent when he was stopped on the gate on 1st April, 1980 he was stopped by the management and not allowed to go in the factory. The representative of the workman argued that the workman was an old and permanent employee who sent the information of his illness to the respondent through a medical certificate which is admitted by the respondent witness that Ex. M-1 was received in the factory. The certificate of E.S.I. was sent from 6th March, 1980 to 11th March, 1980. The dates on the certificates are very clearly given but the respondent has taken this certificate from 11th March, 1980 to 17th March, 1980 and after that they took no step for the information of the workman when the workman was absent from duty it was duty of the management to sent some letters about his absence or ask him to join his duties. But no such letter was sent to the workman which is admitted by the witnesses of the respondent from M.W.-1 to M.W.-4. They have stated that no such letter was sent to the workman. The workman sent the application for extension of leave with medical certificate through Shri Dalip Rana who has come in the witness box and who has stated that he gave two medical certificates and applications to Shri Sehgal incharge of the claimant and he has also stated in his statement that he used to inform the incharge about the condition of the workman claimant and his illness, which proves that the claimant sent the applications to the respondent and when they admitted one medical certificate which was also given through W.W.-1, who was the employee of the respondent and he has left the service in August, 1980 then it is also correct that he gave 2nd medical certificate

and the application for extension of leave. He further argued that the respondent has not produced any such records in which such application and medical certificate were entered without which it can be said that they received no applications. The workman was an active member of the union who used to raise the demand notice of the workmen and the respondent never wants such person in the factory. They were in search of such opportunity to victimise the claimant. He further argued that the ruling cited by the respondent in this case are not applicable to the circumstances and facts of the case. The respondent should have given the opportunity to the workman to explain his absence from duty which was not given and the workman was victimised. The workman has proved his case that he was ill and sent the information about his illness, through the medical certificates and when the respondent knows this fact that the workman is ill it was their moral duty to ask the workman about his absence because he was an old employee of the respondent. He further argued that the respondent witness M.W.-2 Shri N.S. Ratra, Industrial Relation Officer has admitted in his cross examination that on certificate Ex. M.-1 the date is written 6th March, 1980 and there is no date 17th March, 1980 in the certificate. He has also admitted that date 11th March, 1980 is given in the certificate from the E.S.I. When the date 6th March, 1980 and 11th March, 1980 is given then it is strange how the respondent has treated the certificate from 11th March, 1980 to 17th March, 1980 on their own interest. The certificate should have been treated as the dates given in the certificate, and not otherwise. He further argued that the witness Shri S.K. Sehgal M.W.-1 has admitted in his cross-examination that he received the medical certificates of the workman which he forwarded to the personnel department, but he has no record of these medical certificates to show their receipts. He has falsely stated in the court which cannot be believed that he did not receive any other certificate because W.W.-1 Shri Dalip Rena has stated that he gave the second Medical Certificate and application to Shri Sehgal who was not contradicted by any document and there is no suggestion on the witness. He further argued that as stated by the workman in his statement he used to get Rs. 737 per month at the time of termination and he is entitled for his reinstatement as the workman was illegally terminated by the management without any opportunity.

After hearing the arguments of both the parties and going through the file I am of the view that the respondent has failed to prove their case of abandonment of service by the workman as the certificate Ex. M-1 from 6th March, 1980 to 11th March, 1980 from E.S.I. clearly shows that the workman was ill and the statement of Shri Dalip Rena cannot be disbelieved, who has stated that he gave two medical certificates and one application for extension of leave to Shri Sehgal, Incharge of the claimant. The arguments put forward by the workman's representative that no opportunity was given to the workman for explaining his position for his absence has some force. The respondent should have given the opportunity to the workman to explain his position for his absence. The respondent issued no letter to the workman to explain his position about his absence and strike off his name on 1st April, 1980 without knowing the condition of the workman whom they know that he was ill. Without knowing the condition of the workman the striking off the name of the workman from the roll is not justified. So the issue is decided in favour of the workman and against the respondent management.

Issue No. 2 : After deciding issue No. 1 in favour of the workman the respondent has to show nothing about his termination because their plea in the written statement was that his name was struck off from the roll of the company as he was absent without any intimation and information. When the issue has been decided in favour of the workman they have to show nothing about his termination. So the termination of the workman is not justified and according to law. The respondent's representative have cited so many books in this case but these citation are not applicable on the facts of this case, because in this case the workman sent a medical certificate from 6th March, 1980 to 11th March, 1980 which was treated by the respondent from 11th March, 1980 to 17th March, 1980 on their own way and not according to contention of the certificate. Further in the interest of natural justice the respondent should have given the opportunity to explain about his absence from duty and after decision they can take same action by rejecting his reply, which shows that the striking of the name of the workman was not justified and in order and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

Dated the 14th October, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.

Endorsement No. 2225, dated the 19th October, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,
Faridabad.